



February 3, 2006

NEPA Draft Report Comments
c/o NEPA Task Force
Committee on Resources
1324 Longworth House Office Building
Washington D.C.
via email: nepataskforce@mail.house.gov

To Whom It May Concern:

Please accept these comments on the Initial Findings and Draft Recommendations from the Task Force on Improving and Updating the National Environmental Policy Act (NEPA), December 21, 2005

We appreciate the review of NEPA by the Committee on Resources but find that many of the recommendations fall short of the goals of the Act and will have detrimental impacts to our critically important national resources.

We have had personal experience with projects of national and statewide significance that needed more analysis but because of local pressures have moved ahead with potentially disastrous results. The NEPA process allows participants time to step back and analyze a project in a more thoughtful way. Often the only impartial decision-maker on a project is at the federal level and the environmental review is imperative to ensuring a good project.

The recommendations put forth are based on impressions that there needs to be changes. Although there is mention of "burden of proof", there is nothing in the report of actual data showing there are problems. On the contrary, the report acknowledges that empirical data shows few delays in projects and that litigation only occurs 0.2% of the time (p.11). Yet the majority of recommendations are based on the issues of litigation and delays. The most onerous are the recommendations to limit citizen suits. As commented on Page 13, many of these issues could be resolved by involving all the parties in a collaborative process, not just the process proponents. If this were routinely the case, the "threat of litigation" could disappear and our vital natural resources would be protected.

The same groups who says that NEPA can be changed "to ease costs and delays without undermining other substantive environmental laws such as the ESA, CWA or the Federal Land Policy and Management Act" are the ones trying to weaken those other laws. The result will be that all the laws will be weakened.

We hope you will reconsider the following recommendations:

Group 1 – Addressing Delays

- 1:1 – The recommendation to clarify the definition of a major federal action is unclear and will cause more confusion.
- 1:2 – By calling a review “complete” when it actually is not could present more problems and could make a project more susceptible to litigation.
- 1:3 – Who would define “minimal”? Example: dredging may be determined by a port as having minimal damage to a waterway, but would have huge impacts to shellfish growers or fish and wildlife habitat.

Group 2 - Enhancing Public Participation

- 2:1 Local interests should not have more weight than others. These are national permits and therefore have national implications. Most often projects that fall under NEPA have impacts of state and national significance that go beyond local interests.

Group 3 – Better Involvement for State, Local and Tribal Stakeholders

- 3:2 There should be no replacement of NEPA requirements. Political pressures on local and state process often warp permitting. The federal review can be (although, not always) less biased.

Group 4 – Addressing Litigation Issues

- 4:1 The scales are now so weighted toward business and industry interests that to add a provision to put more of the burden on citizens is not acceptable. It is now very difficult for the public to even learn about projects that will impact them. Any rule that makes it more difficult for them to address egregious proposals is not in the public interest. Every recommendation in this section is restricting the public’s ability to improve projects that might permanently damage the environment.
- 4:2 It would seem that requiring the Council on Environmental Quality (CEQ) to monitor court decisions would only add to delays, not help expedite.

Group 5 – Clarifying Alternative Analysis

- 5:1 & 5:2 A far more appropriate alternative selection requirement would be to require the adoption of the least environmentally damaging alternative, which could include the no action alternative.
- 5:3 This is a very positive recommendation that we support. We would add that mitigation should be protected in perpetuity.

Group 7 – Additional Authority for the CEQ

- 7:1 The ombudsman position needs to be non-partisan and independent. The decision-making authority needs more clarification.

Group 8 – Clarifying Meaning of “Cumulative Impacts”

- 8:1 & 8:2 Both past and future environmental impacts must be considered in evaluating existing conditions and appropriate actions. Limiting what type of future actions that should be considered under cumulative impact analysis will restrict the inclusion of new information that may be discovered, thereby creating possible costly and detrimental complications.



Group 9 – Studies

9:2 We commend the task force for studying the issues of recruiting and retaining experienced staff. We feel this will support the implementation of the law.

In conclusion, we are not convinced that the majority of these recommendations will benefit the public and the vital natural resources we must protect for future generations. We urge the task force to reconsider these recommendations. NEPA is one of the most valuable processes to ensure projects are carefully examined and the public has the opportunity to participate. Any weakening of these protections would be a disservice to all stakeholders who participate in the NEPA process.

Sincerely ,



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Vice President

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